IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 248 OF 2005

IN

SUM. SUIT NO. 3662 OF 2004

Sarita G. Mallick ... Plaintiff

vs.

Hirji Ratanshi Gala @
Damjibhai Gala ... Defendants.

Mr. A.P. Rege for plaintiff.
Mr. P.M. Shah for defendants.

CORAM : S.U. KAMDAR, J.

DATED : 25TH OCTOBER, 2005.

P.C.

. The present suit is filed on three demand promissory notes dated 26.10.2001, 30.10.2001 and 10.11.2001 of Rs. 1 lac, Rs. 1 lac and Rs. 1.5 lac each. The interest is also claimed. The total amount comes to Rs. 7,17,500/-. In so far as the defence is concerned, the learned counsel has relied upon three receipts being Exhibits 1, 2 and 3. An affidavit is filed contending therein that he has

already repaid the amount thereunder. The plaintiff denies the signature on receipts. There is no evidence produced to show that any such repayment is at all made. In that view of the matter, the said receipts are bogus and cannot be relied upon. Apart therefrom there is no major defence save and except the claim for interest. In so far as the interest is concerned, the learned counsel appearing for the plaintiff gives up the claim for interest at the rate of 36% and restricts it to 18%. In that view of the matter, there is no substance in the second contention. I am of the opinion that there is no case made out in the present case for any leave being granted. However, with a view to give an opportunity to the defendant to defend the suit, I direct the defendant to deposit in this Court a sum of Rs. 5 lacs within a period of four weeks from today. If the said amount is not deposited, the plaintiff will be entitled to decree as prayed with interest at the rate of 18% per annum in place of 36% per annum. Summons for judgment is dismissed. The amount if so deposited, the Prothonotary and Senior Master is directed to deposit the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till further orders from this Court.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to

be filed four weeks from the date of deposit. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.